

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

S. 3423

To implement merit-based reforms to the civil service hiring system that replace degree-based hiring with skills- and competency-based hiring.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Ms. SINEMA

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chance to Compete
5 Act of 2022”.

6 **SEC. 2. DEFINITIONS.**

7 (a) TERMS DEFINED IN SECTION 3304 OF TITLE 5,
8 UNITED STATES CODE.—In this Act, the terms “agency”,
9 “Director”, “examining agency”, “Office”, “subject mat-
10 ter expert”, and “technical assessment” have the mean-

1 ings given those terms in subsection (c)(1) of section 3304
2 of title 5, United States Code, as added by section 3(a).

3 (b) OTHER TERMS.—In this Act, the term “competi-
4 tive service” has the meaning given the term in section
5 2102 of title 5, United States Code.

6 **SEC. 3. DEFINING THE TERM “EXAMINATION” FOR PUR-**
7 **POSES OF HIRING IN THE COMPETITIVE**
8 **SERVICE.**

9 (a) EXAMINATIONS; TECHNICAL ASSESSMENTS.—

10 (1) IN GENERAL.—Section 3304 of title 5,
11 United States Code, is amended—

12 (A) by redesignating subsections (c)
13 through (f) as subsections (d) through (g), re-
14 spectively; and

15 (B) by inserting after subsection (b) the
16 following:

17 “(c) EXAMINATIONS.—

18 “(1) DEFINITIONS.—

19 “(A) EXAMINATION DEFINED FOR PUR-
20 POSES OF THIS CHAPTER.—For purposes of
21 this chapter, the term ‘examination’—

22 “(i) means an opportunity to directly
23 demonstrate knowledge, skills, abilities,
24 and competencies, through a passing score
25 assessment;

1 “(ii) includes a résumé review that
2 is—

3 “(I) conducted by a subject mat-
4 ter expert; and

5 “(II) based upon indicators
6 that—

7 “(aa) are derived from a job
8 analysis; and

9 “(bb) bear a rational rela-
10 tionship to performance in the
11 position for which the examining
12 agency is hiring; and

13 “(iii) on and after the date that is 2
14 years after the date of enactment of the
15 Chance to Compete Act of 2022, does not
16 include a self-assessment from an auto-
17 mated examination, a résumé review (ex-
18 cept as provided in clause (ii)), or any
19 other method of determining the experi-
20 ence or level of educational attainment of
21 an individual, alone.

22 “(B) OTHER TERMS.—In this subsection—

23 “(i) the term ‘agency’ means an agen-
24 cy described in section 901(b) of title 31;

1 “(ii) the term ‘Director’ means the
2 Director of the Office;

3 “(iii) the term ‘examining agency’
4 means—

5 “(I) the Office; or

6 “(II) an agency to which the Di-
7 rector has delegated examining au-
8 thority under section 1104(a)(2) of
9 this title;

10 “(iv) the term ‘Office’ means the Of-
11 fice of Personnel Management;

12 “(v) the term ‘passing score assess-
13 ment’ means an assessment that an indi-
14 vidual can pass or fail;

15 “(vi) the term ‘subject matter expert’
16 means an employee or selecting official—

17 “(I) who possesses understanding
18 of the duties of, and knowledge, skills,
19 and abilities required for, the position
20 for which the employee or selecting of-
21 ficial is developing or administering
22 an assessment; and

23 “(II) whom the delegated exam-
24 ining unit of the agency that employs
25 the employee or selecting official des-

1 ignates to assist in the development
2 and administration of technical as-
3 sessments under paragraph (2); and

4 “(vii) the term ‘technical assessment’
5 means an assessment developed under
6 paragraph (2)(A)(i) that—

7 “(I) allows for the demonstration
8 of job-related technical skills, abilities,
9 and knowledge;

10 “(II)(aa) is based upon a job
11 analysis;

12 “(bb) is relevant to the position
13 for which the assessment is developed;
14 and

15 “(cc) does not discriminate on
16 the basis of a protected status, as es-
17 tablished by Director in regulations
18 implementing this subsection; and

19 “(III) may include—

20 “(aa) a structured interview;

21 “(bb) a work-related exer-
22 cise;

23 “(cc) a custom or generic
24 procedure used to measure an in-
25 dividual’s employment or career-

1 related qualifications and inter-
2 ests; or

3 “(dd) another assessment
4 that meets the criteria under
5 subclauses (I) and (II).

6 “(2) TECHNICAL ASSESSMENTS.—

7 “(A) IN GENERAL.—For the purpose of
8 conducting an examination for a position in the
9 competitive service, a subject matter expert who
10 is determined by the subject matter expert’s
11 agency to be an expert in the subject and job
12 field of the position, as affirmed and audited by
13 the Chief Human Capital Officer or Human Re-
14 sources Director (as applicable) of that agency,
15 may—

16 “(i) develop, in partnership with
17 human resources employees of the exam-
18 ining agency, a position-specific assessment
19 that is relevant to the position; and

20 “(ii) administer the assessment devel-
21 oped under clause (i) to—

22 “(I) determine whether an appli-
23 cant for the position has a passing
24 score to be qualified for the position;
25 or

1 “(II) rank applicants for the po-
2 sition for category rating purposes
3 under section 3319.

4 “(B) SHARING AND CUSTOMIZATION OF
5 ASSESSMENTS.—

6 “(i) SHARING.—An examining agency
7 may share a technical assessment with an-
8 other examining agency if each agency
9 maintains appropriate control over exam-
10 ination material.

11 “(ii) CUSTOMIZATION.—An examining
12 agency with which a technical assessment
13 is shared under clause (i) may customize
14 the assessment as appropriate, provided
15 that the resulting assessment satisfies the
16 requirements under part 300 of title 5,
17 Code of Federal Regulations (or any suc-
18 cessor regulation).

19 “(iii) PLATFORM FOR SHARING AND
20 CUSTOMIZATION.—

21 “(I) IN GENERAL.—The Director
22 shall establish and operate a platform
23 on which examining agencies can
24 share and customize technical assess-
25 ments under this subparagraph.

1 “(II) GUIDANCE.—Not later than
2 1 year after the date of enactment of
3 the Chance to Compete Act of 2022,
4 the Director shall issue guidance to
5 examining agencies on how to effi-
6 ciently and effectively share assess-
7 ments using the platform established
8 under subclause (I).

9 “(C) ADOPTION OF DETERMINATIONS BY
10 OTHER AGENCIES.—For purposes of sections
11 3318(b) and 3319(e), an appointing authority,
12 other than the appointing authority requesting
13 a certificate of eligibles, that selects an indi-
14 vidual from that certificate in accordance with
15 such section 3318(b) or 3319(e) may adopt the
16 determination described in subparagraph (A) of
17 this paragraph of a subject matter expert em-
18 ployed by the requesting appointing authority
19 instead of administering an additional technical
20 assessment of the individual.”.

21 (2) ALTERNATIVE RANKING AND SELECTION
22 PROCEDURES.—Section 3319(a) of title 5, United
23 States Code, is amended by adding at the end the
24 following: “To be placed in a quality category under
25 the preceding sentence, an applicant shall be re-

1 quired to have passed an examination in accordance
2 with section 3304(b), subject to the exceptions in
3 that section.”.

4 (3) TECHNICAL AND CONFORMING AMEND-
5 MENT.—Section 3330a(a)(1)(B) of title 5, United
6 States Code, is amended by striking “section
7 3304(f)(1)” and inserting “section 3304(g)(1)”.

8 (b) IMPLEMENTATION OF PASSING SCORE ASSESS-
9 MENT REQUIREMENT.—Not later than 2 years after the
10 date of enactment of this Act, the Director and the head
11 of any other examining agency shall eliminate the use of
12 any examination for the competitive service that does not
13 satisfy the definition of the term “examination” in sub-
14 section (c)(1)(A) of section 3304 of title 5, United States
15 Code, as added by subsection (a) of this section.

16 (c) OPM REPORTING.—

17 (1) PUBLIC DASHBOARD.—

18 (A) IN GENERAL.—The Director shall
19 maintain and periodically update a publicly
20 available dashboard that, with respect to each
21 position in the competitive service for which an
22 examining agency examined applicants during
23 the applicable period, includes—

24 (i) the type of assessment used, such
25 as—

1 (I) a behavioral off-the-shelf as-
2 sessment;

3 (II) a résumé review conducted
4 by a subject matter expert;

5 (III) an interview conducted by a
6 subject matter expert;

7 (IV) a technical off-the-shelf as-
8 sessment; or

9 (V) a cognitive ability test;

10 (ii) whether or not the agency selected
11 a candidate for the position; and

12 (iii) the hiring authority used to fill
13 the position.

14 (B) TIMING.—

15 (i) INITIAL DATA.—Not later than
16 180 days after the date of enactment of
17 this Act, the Director shall update the
18 dashboard described in subparagraph (A)
19 with data for positions in the competitive
20 service for which an examining agency ex-
21 amined applicants during the period begin-
22 ning on the date of enactment of this Act
23 and ending on the date of submission of
24 the report.

1 (ii) SUBSEQUENT UPDATES.—Not
2 later than October 1 of each fiscal year be-
3 ginning after the date on which the dash-
4 board is initially updated under clause (i),
5 the Director shall update the dashboard
6 described in subparagraph (A) with data
7 for positions in the competitive service for
8 which an examining agency examined ap-
9 plicants during the preceding fiscal year.

10 (2) ANNUAL PROGRESS REPORT.—

11 (A) IN GENERAL.—Each year, the Direc-
12 tor, in accordance with subparagraphs (B) and
13 (C), shall make publicly available and submit to
14 Congress an overall progress report that in-
15 cludes summary data of the use of examinations
16 (as defined in subsection (c)(1)(A) of section
17 3304 of title 5, United States Code, as added
18 by subsection (a) of this section) for the com-
19 petitive service, including technical assessments.

20 (B) CATEGORIES; BASELINE DATA.—In
21 carrying out subparagraph (A), the Director
22 shall—

23 (i) break the data down by applicant
24 demographic indicator, including veteran
25 status, race, gender, disability, and any

1 other measure the Director determines ap-
2 propriate; and

3 (ii) use the data available as of Octo-
4 ber 1, 2020, as a baseline.

5 (C) LIMITATIONS.—In carrying out sub-
6 paragraph (A), the Director may only make
7 publicly available and submit to Congress data
8 relating to examinations for which—

9 (i) the related announcement is
10 closed;

11 (ii) certificates have been audited; and

12 (iii) all hiring processes are com-
13 pleted.

14 (d) GAO REPORT.—Not later than 5 years after the
15 date of enactment of this Act, the Comptroller General
16 of the United States shall submit to Congress a report
17 that—

18 (1) assesses the implementation of this section
19 and the amendments made by this section;

20 (2) assesses the impact and modifications to the
21 hiring process for the competitive service made by
22 this section and the amendments made by this sec-
23 tion; and

1 (3) makes recommendations for the improve-
2 ment of the hiring process for the competitive serv-
3 ice.

4 **SEC. 4. AMENDMENTS TO COMPETITIVE SERVICE ACT OF**
5 **2015.**

6 (a) PLATFORMS FOR SHARING CERTIFICATES OF
7 ELIGIBLES.—Section 3318(b) of title 5, United States
8 Code, is amended—

9 (1) in paragraph (1), by striking “240-day”
10 and inserting “1-year”;

11 (2) by redesignating paragraph (5) as para-
12 graph (6); and

13 (3) by inserting after paragraph (4) the fol-
14 lowing:

15 “(5) PLATFORM FOR SHARING RÉSUMÉS OF IN-
16 DIVIDUALS ON CERTIFICATES OF ELIGIBLES.—The
17 Director of the Office shall establish and operate a
18 platform on which an appointing authority can
19 share, with other appointing authorities and the
20 Chief Human Capital Officers Council established
21 under section 1303 of the Chief Human Capital Of-
22 ficers Act of 2002 (5 U.S.C. 1401 note; Public Law
23 107–296), the résumés of individuals who are on a
24 certificate of eligibles requested by the appointing
25 authority.”.

1 (b) MAXIMIZING SHARING OF APPLICANT INFORMA-
2 TION.—Section 2 of the Competitive Service Act of 2015
3 (Public Law 114–137; 130 Stat. 310) is amended—

4 (1) by redesignating subsections (c) and (d) as
5 subsections (d) and (e), respectively; and

6 (2) by inserting after subsection (b) the fol-
7 lowing:

8 “(c) MAXIMIZING SHARING OF APPLICANT INFORMA-
9 TION.—

10 “(1) DEFINITIONS.—In this subsection—

11 “(A) the terms ‘agency’, ‘Director’, and
12 ‘Office’ have the meanings given those terms in
13 section 3304(c)(1) of title 5, United States
14 Code; and

15 “(B) the term ‘competitive service’ has the
16 meaning given the term in section 2102 of title
17 5, United States Code.

18 “(2) MAXIMIZING SHARING.—The Director
19 shall maximize the sharing of information among
20 agencies regarding qualified applicants for positions
21 in the competitive service, including by—

22 “(A) providing for the delegation to other
23 agencies of the authority of the Office to host
24 multi-agency hiring actions to increase the re-

1 turn on investment on high-quality pooled an-
2 nouncements; and

3 “(B) sharing certificates of eligibles and
4 accompanying résumés for appointment.”.

5 (c) AMENDMENT OF IMPLEMENTING REGULA-
6 TIONS.—Not later than 180 days after the date of enact-
7 ment of this Act, the Director shall promulgate regulations
8 to carry out the amendments made by this section.

9 **SEC. 5. MODERNIZING AND REFORMING THE ASSESSMENT**
10 **AND HIRING OF FEDERAL JOB CANDIDATES.**

11 (a) IN GENERAL.—Section 3308 of title 5, United
12 States Code, is amended—

13 (1) by striking “scientific, technical, or profes-
14 sional”;

15 (2) by inserting “legally” before “performed”;
16 and

17 (3) by inserting “in a jurisdiction in which the
18 duties of the position are to be performed” after “a
19 prescribed minimum education”.

20 (b) IMPLEMENTATION.—

21 (1) REGULATIONS AND GUIDANCE DOCU-
22 MENTS.—Not later than 1 year after the date of en-
23 actment of this Act, the Director shall amend all
24 regulations and guidance documents as necessary to
25 implement the amendments made by subsection (a).

1 (2) **HIRING PRACTICES.**—Not later than 1 year
2 after the date of enactment of this Act, the Director
3 and the head of any other examining agency shall
4 amend the hiring practices of the Office or the other
5 examining agency, respectively, in accordance with
6 the amendments made by subsection (a).

7 **SEC. 6. TALENT TEAMS.**

8 (a) **FEDERAL AGENCY TALENT TEAMS.**—

9 (1) **IN GENERAL.**—An agency may establish 1
10 or more talent teams (referred to in this section as
11 “agency talent teams”), including at the component
12 level.

13 (2) **DUTIES.**—An agency talent team shall pro-
14 vide hiring support to the agency and other agencies,
15 including by—

16 (A) improving examinations (as defined in
17 subsection (c)(1)(A) of section 3304 of title 5,
18 United States Code, as added by section 3(a));

19 (B) facilitating writing job announcements
20 for the competitive service;

21 (C) sharing high-quality certificates of eli-
22 gibles; and

23 (D) facilitating hiring for the competitive
24 service using examinations (as defined in such
25 subsection (a)) and subject matter experts.

1 (b) OFFICE OF PERSONNEL MANAGEMENT.—The
2 Director may establish a Federal talent team to support
3 agency talent teams in facilitating pooled hiring actions
4 across the Federal Government, providing training, and
5 creating technology platforms to facilitate hiring for the
6 competitive service, including—
7 (1) the development of technical assessments;
8 and
9 (2) the sharing of certificates of eligibles and
10 accompanying résumés under sections 3318(b) and
11 3319(e) of title 5, United States Code.